



Billing Code: 8025-01

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

RIN: 3245-AG39

Surety Bond Guarantee Program – Quick Bond Guarantee Application and Agreement

AGENCY: Small Business Administration.

ACTION: Proposed Rule.

SUMMARY: This proposed rule would implement a streamlined application process in the Prior Approval Program of the Surety Bond Guarantee (SBG) Program for contract amounts not exceeding \$250,000 and would make other minor administrative changes to the SBG Program regulations to, among other things, clarify the procedures for submitting the application forms and paying of fees, and delete an obsolete reference to a form.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN: 3245-AG39 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Office of Surety Guarantees, Suite 8600, 409 Third Street SW, Washington, D.C. 20416.
- Hand Delivery/Courier: Office of Surety Guarantees, 409 Third Street SW, Washington, D.C. 20416.

SBA will post all comments on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, please submit the information to Ms. Barbara Brannan, Management Analyst, Office of Surety Guarantees, 409 Third Street SW, Washington, D.C. 20416 or send an email to Barbara.brannan@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Brannan, Office of Surety Guarantees, 202-205-6545, email: Barbara.brannan@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

Through the Surety Bond Guarantee (SBG) Program, SBA guarantees bid, payment, and performance bonds for contracts up to \$2 million for small and emerging contractors who cannot obtain bonds through regular commercial surety channels. SBA's guarantee provides the incentive needed for sureties to bond these contractors, giving them greater access to contracting opportunities. The SBG Program consists of the Prior Approval Program and the Preferred Surety Bond (PSB) Program. In the Prior Approval Program, sureties must apply to SBA for each bond guarantee and must receive SBA approval before issuing bonds. Sureties in the PSB Program can issue SBA guaranteed bonds without SBA's prior approval.

This rule proposes to implement a streamlined application process for use in the Prior Approval Program for contract amounts not exceeding \$250,000. For these smaller

contracts, SBA proposes to create a new form, the Quick Bond Guarantee Application and Agreement, SBA Form 990A, which will consolidate two of the forms currently used in the SBG Program - SBA Form 990, Surety Bond Agreement and the SBA Form 994, Application for Surety Bond Guarantee Assistance. The proposed SBA Form 990A complements the existing industry practice of offering a streamlined bond application for smaller contract amounts. In addition, SBA will not require the Principal to complete and submit two other forms for these smaller contract amounts, including SBA Form 994F, Schedule of Work in Process, and SBA Form 413, Personal Financial Statement. Instead, to mitigate any risk associated with these smaller contract amounts, the new SBA Form 990A will require the Principal to provide a list of the largest three contracts completed in the last 5 years.

The streamlined application process will also help to address sureties' concerns about the amount of paperwork necessary to obtain bond guarantees in the SBG Program. In FY 2010, SBA guaranteed 2,206 Bid Bonds and 729 Final Bonds in the Prior Approval Program for contracts of \$250,000 or less. The proposed changes would reduce the paperwork burden in applying for surety bond guarantee assistance for contracts of this size. By offering this streamlined application process for lower contract amounts, SBA also hopes to increase activity by participating sureties and to encourage more sureties to begin using the program. As a result, bonding opportunities would be available to more small businesses. This streamlined process will be monitored closely to mitigate any increased risk exposure, including through the use of periodic on-site audits of participating surety companies. SBA will pay particular attention to guaranteed bonds for contracts that are within the dollar limits at the time of application, but that increase to

over \$250,000 after the guaranteed bond is issued. The proposed rule also sets forth the circumstances under which the new SBA Form 990A may not be utilized.

In addition, the proposed rule would make other minor changes to the existing SBG Program rules, including clarifying that SBA Form 990 or SBA Form 990A must be submitted to and approved by SBA prior to the Surety's execution of the bond (except for surety bonding lines) and, with respect to the rules regarding surety bonding lines, removing the reference to SBA Form 994C as this form is no longer used.

II. Section-by-Section Analysis

Section 115.10. SBA is proposing to amend the definition of the term, "Prior Approval Agreement", to add the "Quick Bond Guarantee Application and Agreement (SBA Form 990A)" to the agreements into which a Prior Approval Surety can enter with SBA.

Section 115.30 (d)(1). SBA is proposing to clarify in paragraph (d)(1) that, where the Surety Bond Guarantee Agreement (SBA Form 990) is used, it must be approved before the Prior Approval Surety executes a Bid or a Final Bond, except in the case of a bonding line under § 115.33(d). Until SBA has an opportunity to review and approve or decline an application, the Surety may not execute the bond. SBA is also proposing to amend this paragraph to clarify that the applicable guarantee fees must be paid in accordance with 13 CFR § 115.32, and not as set forth in the current section 115.30(d), which gives the Principal up to 45 days (15 days in the case of a bonding line) after bond execution to pay its fee. Under section 115.32(b), the Principal's fee must be remitted by the Surety with the Prior Approval Agreement.

Section 115.30 (d)(2). SBA is proposing to add this new provision to implement a streamlined application process for bond guarantees for contracts that do not exceed \$250,000. SBA is proposing that applicants use a new form, the “Quick Bond Guarantee Application and Agreement (SBA Form 990A)” in place of SBA Form 990 and SBA Form 994. This new provision would also require that the Quick Bond Guarantee Application and Agreement (SBA Form 990A) be submitted to and approved by SBA before the Surety executes the Bid or Final Bond. Until SBA has an opportunity to review and approve or decline an application, the Surety may not execute the bond. The new provision also would require that the guarantee fees be paid in accordance with 13 CFR § 115.32. This provision also sets forth the circumstances under which this streamlined application process may not be used.

Section 115.32 (b). SBA is proposing to amend this provision to add the requirement that the Principal’s fee be remitted to SBA with the new SBA Form 990A, just as it is required to be submitted with SBA Form 990.

Section 115.32 (c). SBA is proposing to amend this paragraph to clarify that the requirements regarding the guarantee fee paid by the Surety applies to the new SBA Form 990A, just as it applies to the SBA Form 990.

Section 115.32 (d)(1). SBA is proposing to delete the words “Supplemental Form 990” from this paragraph to make it clear that this provision applies to bond guarantees approved under the new SBA Form 990A in addition to SBA Form 990. SBA is also proposing to add a sentence to provide that, in notifying SBA of any increase or decrease in the Contract or bond amount, the Surety must use the same form that it used in applying for the original bond guarantee.

Section 115.33(d). SBA is proposing to eliminate references to the Surety Bond Guarantee Review Update (SBA Form 994C) throughout this provision because the form is no longer used.

Compliance with Executive Orders 12866, 12988, 13132, and 13563, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601 -612)
Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule does not constitute a significant regulatory action under the meaning of Executive Order 12866. This proposed rule is also not a major rule under the Congressional Review Act.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132.

SBA has determined that the rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purpose of Executive Order 13132, Federalism, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13563

In accordance with Executive Order 13563, SBA discussed implementing a streamlined application process with several surety industry associations and surety company representatives and they responded very favorably.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this proposed rule imposes additional reporting and recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35. As described above, SBA proposes to implement a new application process for surety bonds for contracts that are equal to or less than \$250,000. The public is invited to comment on the proposed new form that will be used to collect application information and to submit any comments by the deadline stated in the DATES section of this rule to: SBA Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, 725 17th Street NW, Washington, DC 20503.

SBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of SBA's functions, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology. SBA will submit the proposed form and other documents required under the Paperwork Reduction Act to OMB for review and approval.

A description of this information collection, the respondents, and the estimate of the annual hour burden resulting from this new process is provided below. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the responses.

Title: Quick Bond Surety Guarantee Application and Agreement (SBA Form 990A).

Description: The Quick Bond Surety Guarantee Application and Agreement is a combination application and bond guarantee agreement that would be used in the Prior Approval Program for contract amounts that do not exceed \$250,000. It is a streamlined alternative to the existing surety bond application and agreement, the SBA Forms 990 and 994 (OMB Control Number 3245-0007). The information would be used to evaluate whether the applicant small business meets the program eligibility criteria and the likelihood that it will successfully complete performance on the contract.

OMB Control Number: New Collection

Description of and Estimated Number of Respondents. This proposed new collection would be submitted by small businesses seeking to obtain a bond in order to bid or perform on a contract, and by surety companies and their agents or representatives. Based on the current volume of bonds for contracts up to \$250,000, SBA estimates that approximately 500 small businesses and 13 Prior Approval Sureties would submit this streamlined application and agreement form.

Estimated Response Time: It is estimated that each applicant would require approximately 5 minutes to complete the proposed new form.

Estimated Number of Responses: 4,450. This number is based on SBA's projection of program activity during Fiscal Year 2012.

Total Estimated Annual Hour Burden: 369 hours

Estimated Annual Cost Burden: \$18,941

Regulatory Flexibility Act, 5 U.S.C. 601-612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Within the meaning of RFA, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are 13 Sureties that currently participate in the SBA Prior Approval program, and no part of this proposed rule would impose any significant additional cost or burden on them.

List of Subjects in 13 CFR Part 115

Claims, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR Part 115 as follows:

PART 115 – SURETY BOND GUARANTEE

1. The authority citation for part 115 continues to read as follows:

Authority: 5 U.S.C. app. 3; 15 U.S.C. 687b, 687c, 694a, 694b note, Pub. L. 106–554; Pub. L. 108–447, Div K, Sec. 203; Pub. L. 110–246, Sec. 12079, 122 Stat. 1651; and Pub. L. 111–5, 123 Stat. 115.

§ 115.10 [Amended]

2. In § 115.10 amend the definition of “Prior Approval Agreement” by adding “or Quick Bond Guarantee Application and Agreement (SBA Form 990A)” after “(SBA Form 990)”.

3. Amend § 115.30 as follows:

- a. Revise paragraph (d) to read as set forth below; and
- b. Add a new paragraph (e) to read as set forth below.

.§ 115.30 Submission of Surety’s guarantee application.

* * * * *

(d) Prior Approval Agreement. To apply for a bond guarantee, a Prior Approval Surety must submit one of the following forms:

(1) Surety Bond Guarantee Agreement (SBA Form 990). A Prior Approval Surety may complete and submit a Surety Bond Guarantee Agreement (SBA Form 990) to SBA for each Bid Bond or Final Bond, and this Form must be approved by SBA prior to the Surety’s Execution of the bond, except in the case of a surety bonding line approved by SBA under § 115.33 (d). The guarantee fees owed in connection with Final Bonds must be paid in accordance with § 115.32.

(2) Quick Bond Guarantee Application and Agreement (SBA Form 990A).

(i) General procedures. Except as provided in (d)(2)(ii) of this section, a Prior Approval Surety may complete and submit the Quick Bond Guarantee Application and Agreement (SBA Form 990A) to SBA for each Bid Bond or Final Bond, and this Form must be approved by SBA prior to the Surety’s Execution of the bond. SBA Form 990A is a streamlined application form that may be used only for contract amounts that do not

exceed \$250,000 at the time of application. The guarantee fees owed in connection with Final Bonds must be paid in accordance with § 115.32.

(ii) Exclusions. SBA Form 990A may not be used under the following circumstances:

(A) The Principal has previously defaulted on any contract or has had any claims or complaints filed against it with any court or administrative agency;

(B) Work on the Contract commenced before a bond is Executed;

(C) The time for completion of the Contract or the warranty/maintenance period exceeds 12 months;

(D) The Contract includes a provision for liquidated damages that exceed \$250 per day;

(E) The Contract involves asbestos abatement, hazardous waste removal, demolition, or timber sales; or

(F) The bond would be issued under a surety bonding line approved under § 115.33.

4. Amend § 115.32 as follows:

a. Revise the fourth sentence of paragraph (b) to read as set forth below;

b. Revise the second sentence of paragraph (c) to read as set forth below; and

c. In the second sentence of paragraph (d)(1), remove the words “(Supplemental Form 990)”, and add the following sentence at the end: “In notifying SBA of any increase or decrease in the Contract or bond amount, the Surety must use the same form (SBA Form 990 or SBA Form 990A) that it used in applying for the original bond guarantee.”

§ 115.32 Fees and Premiums.

* * * * *

(b) * * * _The Principal’s fee is rounded to the nearest dollar and is to be remitted to SBA by the Surety together with the form submitted under either § 115.30(d)(1) or (2).

* * *

(c) * * * Subject to § 115.18(a)(4), the Surety must pay SBA a guarantee fee on each guaranteed bond (other than a Bid Bond) within 60 calendar days after SBA’s approval of the Prior Approval Agreement. * * *

* * * * *

5. Amend § 115.33 by revising paragraphs (d) (1) and (d) (2) to read as follows:

§ 115.33 Surety bonding line.

* * * * *

(d)(1) Submission of forms to SBA – Bid Bonds. Within 15 business days after the Execution of any Bid Bonds under a bonding line, the Surety must submit a “Surety Bond Guarantee Underwriting Review” (SBA Form 994B) to SBA for approval. If the Surety fails to submit the form within this time period, SBA’s guarantee of the bond will be void from its inception unless SBA determines otherwise upon a showing that a valid reason exists why the timely submission was not made.

(2) Submission of forms to SBA – Final Bonds. Within 15 business days after the Execution of any Final Bonds under a bonding line, the Surety must submit a Surety Bond Guarantee Underwriting Review (SBA Form 994B) and a Surety Bond Guarantee Agreement (SBA Form 990) to SBA for approval. If the Surety fails to submit these forms within the time period or the guarantee fees are not paid in accordance with

§115.32, SBA's guarantee of the bond will be void from its inception unless SBA determines otherwise upon a showing that the Contract is not in default and a valid reason exists why the timely submission was not made.

* * * * *

Dated: January 30, 2012

Karen G. Mills,
Administrator.

[FR Doc. 2012-2519 Filed 02/03/2012 at 8:45 am; Publication Date: 02/06/2012]